

## CONTRACT FOR PURCHASE OF MATERIALS/SERVICES

Contract No. 2024-64

This Contract is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the City of Flagstaff, a political subdivision of the State of Arizona ("City") and CJF Arizona, LLC (DBA Findlay Toyota Scion Flagstaff), an Arizona individual/sole proprietor or single-member LLC ("Contractor").

WHEREAS, the City desires to receive, and Contractor is able to provide materials and/or services; and

NOW THEREFORE, in consideration for the mutual promises contained herein, the Parties agree:

1. Scope of Work: Contractor shall provide the materials and/or services generally described as:

### **Two (2) 2023 Toyota Rav4 Hybrid SUVs**

and as more specifically described in the Scope of Work, attached hereto as Exhibit A.

2. Compensation: Contractor shall be paid for the materials and/or services provided in the amount of **seventy-three thousand, thirty-six dollars and fifteen cents (\$73,036.15), plus other fees and taxes**; per the terms of the Scope of Work attached as Exhibit A. Any price adjustment must be approved by the City in writing as a formal Contract Amendment. The City Council must approve any price adjustment if the annual contract prices exceeds \$50,000; otherwise, the City Manager or his/her designee (the Purchasing Director) shall have authority to approve a price adjustment on behalf of the City.
3. Standard Terms and Conditions: The City of Flagstaff Standard Terms and Conditions, attached hereto as Exhibit B, are incorporated by reference and shall apply to performance of this Contract, except to the extent modified by Exhibit A.
4. Insurance: Contractor shall meet insurance requirements attached hereto as Exhibit C.
5. Contract Term: The Contract term is for a period of three (3) years unless terminated pursuant to the Standard Terms and Conditions, attached hereto as Exhibit B. The Contract will be effective as of the date signed by both parties. Performance shall commence within ten (10) days from the City's issuance of the Notice to Proceed.
6. Renewal: The Contract may be renewed or extended for up to two (2) additional one (1)- year terms by mutual written consent of the parties. The City Manager or his/her designee (the Purchasing Director) shall have authority to approve renewal on behalf of the City.
7. Notice: Any formal notice required under the Contract shall be in writing and sent by certified mail and email as follows:

To the City:

Nathan Naliborski, Fleet Manager  
City of Flagstaff  
211 W. Aspen Ave.  
Flagstaff, AZ 86001  
nnaliborski@flagstaffaz.gov  
Phone: 928-213-2187

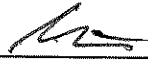
To Contractor:

Bryce Remer  
Findlay Toyota Flagstaff  
5030 East Marketplace Dr.  
Flagstaff, AZ 86004  
BRemer@findlayauto.com  
928 285-6206

With a copy to:  
Robert Johnson, Purchasing Manager  
City of Flagstaff  
211 W. Aspen Ave.  
Flagstaff, AZ 86001  
robert.johnson@flagstaffaz.gov

8. Authority: Each Party warrants that it has authority to enter into the Contract and perform its obligations hereunder, and that it has taken all actions necessary to enter into the Contract.

**CONTRACTOR:**

By:  Kyle Brobst  
Title: Sales Manager

**CITY OF FLAGSTAFF**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney's Office

Notice to Proceed issued: \_\_\_\_\_, 20\_\_

August 8, 2023

**FINDLAY TOYOTA SCION FLAGSTAFF**  
**5030 MARKETPLACE DR**  
**FLAGSTAFF AZ 86004**  
**(928)779 2445**

DEAL# 117493  
 CUST# 1004499

**RETAIL PURCHASE AGREEMENT**

Deal #: 117493

Purchaser's Name(s): CITY OF FLAGSTAFF Date: 10/30/2023

Address: 211 W ASPEN AVE FLAGSTAFF AZ 86001 County: COCONINO

Telephone (1): 928/779-7631 Telephone (2): 928/213-2186 DOB: \_\_\_\_\_

E-mail: gconlin@flagstaffaz.gov D.L./State I.D.#: \_\_\_\_\_ Issuing State: \_\_\_\_\_ Exp. Date: \_\_\_\_\_

The above information has been requested so that we may verify your identity. By signing below, you represent that you are at least 18 years of age and have authority to enter into this Agreement. The Odometer Reading for the Vehicle you are purchasing from us is accurate unless indicated otherwise. Please refer to the Federal Mileage Statement for full disclosure.

YEAR <b>2023</b>	MAKE <b>TOYOTA</b>	MODEL <b>RAV4</b>	COLOR <b>Ice Cap</b>	STOCK NO. <b>P138DK29</b>
VIN/SERIAL NO. <b>JTMLWRFV4PD206458</b>		ODOMETER READING <input type="checkbox"/> Not Accurate <b>5</b>	SALESPERSON <b>BRYCE REMER</b>	
THE VEHICLE IS: <input checked="" type="checkbox"/> NEW <input type="checkbox"/> USED PRIOR USE DISCLOSURE: <input type="checkbox"/> DEMONSTRATOR <input type="checkbox"/> EXECUTIVE <input type="checkbox"/> RENTAL <input type="checkbox"/> OTHER				
<b>WARRANTY STATEMENT</b>			<b>CASH PRICE OF VEHICLE 32884.00</b>	
<p><b>ALL VEHICLES:</b> Any warranties by a manufacturer or supplier other than our Dealership ("the Seller") are theirs, not ours, and only such manufacturer or supplier shall be liable for performance under such warranties. We neither assume nor authorize any other person to assume for us any liability in connection with the sale of the Vehicle and the related goods and services.</p> <p><b>NEW VEHICLES SOLD AS-IS BY SELLER:</b> Seller expressly disclaims all express and implied warranties, including the implied warranties of merchantability and fitness for a particular purpose, unless Seller enters into a Service Contract with you at the time of, or within 90 days of, the date of this transaction.</p> <p><b>USED VEHICLES:</b> The Seller hereby warrants that this Vehicle will be fit for the ordinary purposes for which the Vehicle is used for fifteen (15) days or five hundred (500) miles after delivery, whichever is earlier, except with regard to particular defects disclosed on the first page of this Agreement. You (the Purchaser) will have to pay up to twenty-five dollars (\$25.00) for each of the first two repairs if the warranty is violated.</p> <p><b>The Vehicle is Sold As-Is - Not Expressly Warranted Or Guaranteed</b> by Seller and Seller makes no implied warranty of fitness for any particular purpose, or implied warranty of merchantability beyond that set forth above, unless a box is marked below indicating that the Vehicle is sold with a Used Vehicle Limited Warranty from Seller or Seller enters into a Service Contract with you at the time of, or within 90 days of, the date of this transaction. <b>CONTRACTUAL DISCLOSURE STATEMENT (USED VEHICLES ONLY)</b> The information you see on the window form for this Vehicle is part of this Contract. Information on the window form overrides any contrary provisions in the contract of sale. <b>Traducción española: Vea el dorso.</b></p> <p><input type="checkbox"/> If this box is marked, the Vehicle is sold with a Used Vehicle Limited Warranty from Seller. Please see the Used Vehicle Limited Warranty; No other express warranties are made by Seller. Any implied warranties shall apply for the duration required by State Law or the duration of the Used Vehicle Limited Warranty, whichever is longer.</p>			OTHER GOODS/SERVICES <b>N/A</b>	
			N/A <b>N/A</b>	
			N/A <b>N/A</b>	
			N/A <b>N/A</b>	
			N/A <b>N/A</b>	
			N/A <b>N/A</b>	
			N/A <b>N/A</b>	
			N/A <b>N/A</b>	
			N/A <b>N/A</b>	
			N/A <b>N/A</b>	
<b>WAIVER OF THE IMPLIED WARRANTY OF MERCHANTABILITY FOR PARTICULAR DEFECTS (PLEASE SEE ATTACHED WAIVER)</b>			<b>EMISSION INSPECTION FEE</b>	
<p><b>Attention Purchaser: Sign here only if the Dealer told you that this Vehicle has the following problem(s) and that you agree to buy the Vehicle on those terms:</b></p> <p>1. <u>N/A</u></p> <p>2. <u>N/A</u></p> <p>3. <u>N/A</u></p> <p>Purchaser's Signature(s): _____ Date: _____</p>			<b>DOCUMENTARY FEES</b>	
			<b>TAXABLE SELLING PRICE 32884.00</b>	
			<b>SALES TAX 9.1810 3019.08</b>	
			<b>REGISTRATION FEE 11.46</b>	
			<b>TITLE FEE 4.00</b>	
			<b>TIRE FEE 5.00</b>	
			<b>DOC FEE 499.00</b>	
<b>TRADE-IN VEHICLE INFORMATION</b>			<b>TRADE-IN ALLOWANCE</b>	
Year: _____	Make: _____	Model: _____	Color: _____	<b>MINUS: PAYOFF BALANCE</b>
VIN/Serial No: _____		Odometer Reading: <input type="checkbox"/> Not Accurate		<b>NET TRADE-IN ALLOWANCE</b>
Trade-in Allowance: <u>N/A</u>		Balance Owed & Lienholder: _____		<b>TOTAL DUE 36422.54</b>
<b>OTHER MATERIAL UNDERSTANDINGS AND INTEGRATED DOCUMENTS</b>			<b>TRADE-IN SALES TAX CREDIT N/A</b>	
<input type="checkbox"/> IF BOX IS MARKED, PLEASE SEE THE DELIVERY CONFIRMATION.			<b>DEPOSIT/PARTIAL PAYMENT N/A</b>	
<input checked="" type="checkbox"/> IF BOX IS MARKED, PLEASE SEE THE CONDITIONAL (SPOT) DELIVERY AGREEMENT.			<b>N/A</b>	
You have entered into a Service Contract with <u>N/A</u>			<b>UNPAID BALANCE DUE 36422.54</b>	

The front and back of this Agreement and any documents which are part of this transaction or incorporated herein comprise the entire agreement affecting this Retail Purchase Agreement and no other agreement or understanding of any nature concerning the same has been made or entered into, or will be recognized. I have read the terms and conditions of this Agreement, including those terms and conditions that appear on the reverse side, and agree to them as if they were printed above my signature. I further acknowledge receipt of a copy of this Agreement. This Agreement shall not become binding until signed and accepted by a Dealership Representative.

Purchaser \_\_\_\_\_

Accepted By Authorized Dealership Representative \_\_\_\_\_

Purchaser \_\_\_\_\_  
 DealerCAP

## ADDITIONAL AGREEMENTS BETWEEN THE DEALERSHIP AND PURCHASER(S)

- Terms Used In This Agreement:** This Retail Purchase Agreement contains the following words and phrases that appear throughout this Agreement and have particular meanings:
  - Agreement** - Means this Retail Purchase Agreement together with any documents incorporated into this Agreement by reference, whether such reference is made in this Agreement or in the document itself.
  - You, Your** - Means the Purchaser(s) identified on the front side of this Agreement.
  - We, Us, Our** - Means the Dealership that is identified on the front side of this Agreement and its Authorized Representatives.
  - Manufacturer** - Means the company that manufactured the Vehicle.
  - Vehicle** - Means the Vehicle that you are purchasing from us as described on the front of this Agreement.
  - Trade-In Vehicle** - Means the vehicle you are delivering to us as part of this transaction as identified on the front side of this Agreement.
- Our Right to Increase the Price:** We may increase the price of the Vehicle after we accept this Agreement if the Trade-In Vehicle is reappraised, new equipment is required by state or federal law, or the increase is caused by state or federal tax rate changes. If the price is increased, you may cancel this Agreement with full refund of any Deposit/Down Payment, provided that the cancellation occurs prior to you taking delivery of the purchased Vehicle.
- Manufacturer's Design Changes:** In the event the Manufacturer changes or modifies the design of or any part or accessory of the Vehicle after your order for the Vehicle has been entered by us, you will not have any claim or right against us if the Vehicle does not contain such changes or modifications, nor shall we be required to effect such changes or modifications to the Vehicle.
- Your Representations and Warranties:** You represent, warrant and affirm to us that (a) You are not purchasing a new Vehicle for resale or export within the period beginning on the date the Vehicle title is issued to you and ending on the date one (1) year thereafter. You confirm that we are relying on this representation and agree that we would not sell the Vehicle to you without this representation. If we are required by the Manufacturer to forfeit or repay any manufacturer incentives, allowance and/or special pricing, or if we suffer any loss or harm as a result of your breach of this provision, you agree to indemnify and hold us harmless from any such cost, loss or harm suffered as a result of or arising because of your breach; (b) the Deposit/Down Payment and any amounts due to us have been paid in full, any check given to us will be honored by your Bank, and that no part of the Deposit/Down Payment has been loaned to you by us or any third party; (c) all statements made by you in this Agreement and any other documents completed in connection with this transaction are true and correct; and (d) you are who you have represented yourself to be and you have purchased the Vehicle for your own use and not on behalf of another person, unless you have disclosed otherwise to us.
- Your Representations Regarding the Trade-In Vehicle:** Any Trade-In Vehicle delivered by you to us in connection with this transaction shall be accompanied by a Certificate of Title or documents sufficient to enable us to obtain a Certificate of Title to the Trade-In Vehicle in accordance with applicable state law. You warrant that the Trade-In Vehicle delivered to us is properly titled to you, has never been titled as or declared a total loss, salvage, junk, rebuilt, flood, or lemon buyback vehicle; that you have the right to sell or otherwise convey such vehicle; that such vehicle is free and clear of liens or encumbrances, except as may be noted on the front side of this Agreement; all emissions control equipment is on the vehicle and in satisfactory working order; and, unless you have told us otherwise, that you have not removed any equipment from the vehicle subsequent to our appraisal and that the odometer reading shown is accurate.
- Trade-In Vehicle Payoff:** If you are delivering a Trade-In Vehicle in connection with this transaction and the actual amount of the Balance Owed on the Trade-In Vehicle is greater than the amount of the Balance Owed as listed in this Agreement, you agree to pay the difference to us. If the actual amount of the Balance Owed is less than the amount listed, we will pay or credit the difference to you.
- Our Appraisal of Your Trade-In Vehicle:** If you are delivering a Trade-In Vehicle to us in connection with this transaction and the delivery will not be made until delivery of the Vehicle being purchased from us, we shall have the right to reappraise your Trade-In Vehicle at the time of delivery. The reappraised amount shall be the amount allowed for the Trade-In Vehicle in this transaction. If you are dissatisfied with the reappraisal, you may cancel this Agreement with full refund of any Deposit/Down Payment, provided that the cancellation occurs prior to you taking delivery of the purchased Vehicle.
- Remedies Upon Rightful Cancellation:** You agree that we are not liable for any damages resulting from our failure to deliver the Vehicle if the failure is caused by the manufacturer, an accident, fire, act of nature or any other causes beyond our control. This Agreement may be renegotiated or canceled (with full refund of any Deposit/Down Payment) if the Vehicle is not delivered to you as specified on the front side of this Agreement or pursuant to Paragraphs 2 or 7. If you have delivered a Trade-In Vehicle to us, the Trade-In Vehicle will be returned to you if we have not already sold it. If we have already sold the Trade-In Vehicle, we will refund the agreed upon Trade-In Allowance. Regardless of whether we return the Trade-In Vehicle or have already sold it, you shall be responsible for paying to us the Balance Owed on the Trade-In Vehicle if we have paid the Balance Owed to the Lienholder. We may keep any portion of the amount you have paid to us as a Deposit/Down Payment and any Trade-In Allowance we owe to you to offset against the amount you owe us. If the actual amount you owe to us is greater than the amount of the Deposit/Down Payment, you agree to pay the difference to us. If the actual amount you owe is less than the amount of the Deposit/Down Payment, we will pay the difference to you. You are responsible for paying the cost of repairing any damage and any other losses, liabilities, damages, claims, costs and expenses arising out of your use, possession and control of the Vehicle.
- Purchaser's Default and Dealership's Remedies:** In the event you have agreed to pay the Amount to be Financed in cash or financing is being obtained by you through a credit source of your choice and we do not receive the Amount to be Financed from you at the time of delivery of the Vehicle or on the date promised on the front of this Agreement, you fail to perform any of your other obligations under this Agreement, or you breach any representation or warranty made by you to us, we shall be permitted, at our sole discretion, to the choice of remedies in this Agreement, which may be used separately or together, including: (1) cancel this Retail Purchase Agreement; (2) repossess the Vehicle without notice (if permitted by law); (3) rescind the sales transaction; (4) seek collection for amounts due; (5) retain any cash down payment made by you; and/or (6) in the event that you have delivered a Trade-In Vehicle as part of the consideration for your purchase of the Vehicle from us, to sell such Trade-In Vehicle and reimburse the Dealership out of the proceeds of such sale for any reasonable expenses incurred in connection with preparing and offering the Trade-In Vehicle for sale and any actual damages suffered by us as a result of your default. Regardless of whether we return the Trade-In Vehicle or have already sold it, you shall be responsible for paying to us the Balance Owed on the Trade-In Vehicle if we have paid the Balance Owed to the Lienholder and for any reasonable expenses incurred by us in connection with preparing or reconditioning the Trade-In Vehicle for sale. Any remedies in this Paragraph 9 shall be in addition to, and not in lieu of, any other remedies available under the Retail Purchase Agreement or at law or equity. Any waiver of all or part of a remedy hereunder is not a continuing waiver. If the actual amount you owe to us is greater than the amount of the down payment and/or proceeds from the sale of your Trade-In Vehicle, you agree to pay the difference to us upon demand and if the actual amount you owe is less, then we will pay the difference to you.
- Other Products and Services:** The Dealership offers its customers goods and services from various suppliers. The amounts charged to customers for such goods or services may be greater than the Dealership's cost, and/or the Dealership may receive a commission or other payment in connection with such sale. You are not required to purchase any other goods or services from us, nor are you required to finance the Amount to be Financed under this Agreement with a particular lending source. In the event this Agreement includes a charge for other goods or services for which you must complete an application for coverage, and for any reason such coverage cannot be provided, you will receive a credit for the amount charged. If the cost of other goods or services was included in the amount to be financed in connection with this transaction, then this credit will be applied to the outstanding balance you owe to the Lender.
- Dealer Assisted Financing:** If we assist you to obtain financing for this transaction, the Annual Percentage Rate may be negotiated with us and we may receive a fee, commission or other compensation from the Lender. We do not make any representations or warranties regarding whether you obtained the best rate or could have obtained a better rate from us or a third party.
- CONTRACTUAL DISCLOSURE STATEMENT (USED VEHICLES ONLY)** The information you see on the window form for this Vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale. SPANISH TRANSLATION: Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.
- GOVERNING LAW:** THE TERMS AND CONDITIONS OF THIS AGREEMENT (INCLUDING ANY DOCUMENTS WHICH ARE A PART OF THIS TRANSACTION OR INCORPORATED HEREIN BY REFERENCE) AND ANY SALE HEREUNDER WILL BE GOVERNED BY THE LAWS OF THE STATE OF ARIZONA.
- LIMIT ON DAMAGES:** TO THE EXTENT PERMITTED BY ARIZONA LAW, PURCHASER EXPRESSLY WAIVES AND SHALL NOT BE ENTITLED TO RECOVER FROM THE DEALERSHIP ANY CONSEQUENTIAL DAMAGES, DAMAGES TO PROPERTY, DAMAGES FOR LOSS OF USE, LOSS OF TIME, LOSS OF PROFITS OR INCOME, OR ANY OTHER INCIDENTAL DAMAGES.
- CONDITIONAL DELIVERY AGREEMENT/LIMITED RIGHT TO CANCEL:** You may secure financing for this transaction through us or a financial institution of your choice. If you have elected to secure financing through us, the provisions of the Conditional Delivery Agreement/Limited Right to Cancel will apply. We may cancel this Agreement if: (1) you provide false or incomplete information regarding your creditworthiness; (2) your credit application is not approved by a financing source; or (3) your purchase is subject to the Conditional Delivery Agreement/Limited Right to Cancel and the Retail Installment Sale Contract is not accepted or approved by a financing source on terms acceptable to us.
- Entire Agreement and Signing Other Documents:** The front and back of this Agreement and any documents which are part of this transaction or incorporated herein by reference comprise the entire agreement affecting this transaction. No other agreement or understanding of any nature has been made or will be recognized. You agree to sign any and all documents necessary to complete the terms of this transaction.

**FINDLAY TOYOTA SCION FLAGSTAFF**  
**5030 MARKETPLACE DR**  
**FLAGSTAFF AZ 86004**  
**(928)779 2445**

DEAL# 117492  
 CUST# 1004499

**RETAIL PURCHASE AGREEMENT**

Deal #: 117492

Purchaser's Name(s): CITY OF FLAGSTAFF Date: 10/03/2023

Address: 211 W ASPEN AVE FLAGSTAFF AZ 86001 County: COCONINO

Telephone (1): 928/779-7631 Telephone (2): 928/213-2186 DOB: \_\_\_\_\_

E-mail: gconlin@flagstaffaz.gov D.L./State I.D.#: \_\_\_\_\_ Issuing State: \_\_\_\_\_ Exp. Date: \_\_\_\_\_

The above information has been requested so that we may verify your identity. By signing below, you represent that you are at least 18 years of age and have authority to enter into this Agreement. The Odometer Reading for the Vehicle you are purchasing from us is accurate unless indicated otherwise. Please refer to the Federal Mileage Statement for full disclosure.

YEAR <b>2023</b>	MAKE <b>TOYOTA</b>	MODEL <b>RAV4</b>	COLOR <b>Ice Cap</b>	STOCK NO. <b>P137DM46</b>
VIN/SERIAL NO. <b>JTMLWRFV1PD204568</b>		ODOMETER READING <input type="checkbox"/> Not Accurate <b>5</b>	SALESPERSON <b>BRYCE REMER</b>	
THE VEHICLE IS: <input checked="" type="checkbox"/> NEW <input type="checkbox"/> USED		PRIOR USE DISCLOSURE: <input type="checkbox"/> DEMONSTRATOR <input type="checkbox"/> EXECUTIVE <input type="checkbox"/> RENTAL <input type="checkbox"/> OTHER		
<b>WARRANTY STATEMENT</b>				
<p><b>ALL VEHICLES:</b> Any warranties by a manufacturer or supplier other than our Dealership ("the Seller") are theirs, not ours, and only such manufacturer or supplier shall be liable for performance under such warranties. We neither assume nor authorize any other person to assume for us any liability in connection with the sale of the Vehicle and the related goods and services.</p> <p><b>NEW VEHICLES SOLD AS-IS BY SELLER:</b> Seller expressly disclaims all express and implied warranties, including the implied warranties of merchantability and fitness for a particular purpose, unless Seller enters into a Service Contract with you at the time of, or within 90 days of, the date of this transaction.</p> <p><b>USED VEHICLES:</b> The Seller hereby warrants that this Vehicle will be fit for the ordinary purposes for which the Vehicle is used for fifteen (15) days or five hundred (500) miles after delivery, whichever is earlier, except with regard to particular defects disclosed on the first page of this Agreement. You (the Purchaser) will have to pay up to twenty-five dollars (\$25.00) for each of the first two repairs if the warranty is violated.</p> <p><b>The Vehicle Is Sold As-Is - Not Expressly Warranted Or Guaranteed</b> by Seller and Seller makes no implied warranty of fitness for any particular purpose, or implied warranty of merchantability beyond that set forth above, unless a box is marked below indicating that the Vehicle is sold with a Used Vehicle Limited Warranty from Seller or Seller enters into a Service Contract with you at the time of, or within 90 days of, the date of this transaction. <b>CONTRACTUAL DISCLOSURE STATEMENT (USED VEHICLES ONLY)</b> The information you see on the window form for this Vehicle is part of this Contract. Information on the window form overrides any contrary provisions in the contract of sale. <b>Traducción española: Vea el dorso.</b></p> <p><input type="checkbox"/> If this box is marked, the Vehicle is sold with a Used Vehicle Limited Warranty from Seller. Please see the Used Vehicle Limited Warranty; No other express warranties are made by Seller. Any implied warranties shall apply for the duration required by State Law or the duration of the Used Vehicle Limited Warranty, whichever is longer.</p>				
<b>CASH PRICE OF VEHICLE</b>		<b>33059.00</b>		
<b>OTHER GOODS/SERVICES</b>		<b>N/A</b>		
<b>N/A</b>		<b>N/A</b>		
<b>N/A</b>		<b>N/A</b>		
<b>N/A</b>		<b>N/A</b>		
<b>N/A</b>		<b>N/A</b>		
<b>N/A</b>		<b>N/A</b>		
<b>N/A</b>		<b>N/A</b>		
<b>N/A</b>		<b>N/A</b>		
<b>EMISSION INSPECTION FEE</b>				
<b>DOCUMENTARY FEES</b>				
<b>TAXABLE SELLING PRICE</b>		<b>33059.00</b>		
<b>SALES TAX</b>		<b>9.1810</b>	<b>3035.15</b>	
<b>REGISTRATION FEE</b>		<b>11.46</b>		
<b>TITLE FEE</b>		<b>4.00</b>		
<b>TIRE FEE</b>		<b>5.00</b>		
<b>DOC FEE</b>		<b>499.00</b>		
<b>WAIVER OF THE IMPLIED WARRANTY OF MERCHANTABILITY FOR PARTICULAR DEFECTS (PLEASE SEE ATTACHED WAIVER)</b>				
<p><b>Attention Purchaser: Sign here only if the Dealer told you that this Vehicle has the following problem(s) and that you agree to buy the Vehicle on those terms:</b></p> <p>1. <u>N/A</u></p> <p>2. <u>N/A</u></p> <p>3. <u>N/A</u></p>				
Purchaser's Signature(s): _____		Date: _____		
<b>TRADE-IN VEHICLE INFORMATION</b>				
Year:	Make:	Model:	Color:	
VIN/Serial No:	Odometer Reading:		<input type="checkbox"/> Not Accurate	
Trade-in Allowance:	Balance Owed & Lienholder:			
<b>N/A</b>				
<b>OTHER MATERIAL UNDERSTANDINGS AND INTEGRATED DOCUMENTS</b>				
<input type="checkbox"/> IF BOX IS MARKED, PLEASE SEE THE DELIVERY CONFIRMATION.				
<input checked="" type="checkbox"/> IF BOX IS MARKED, PLEASE SEE THE CONDITIONAL (SPOT) DELIVERY AGREEMENT.				
You have entered into a Service Contract with <u>N/A</u>				
<b>TRADE-IN ALLOWANCE</b>				
<b>MINUS: PAYOFF BALANCE</b>				
<b>NET TRADE-IN ALLOWANCE</b>				
<b>TOTAL DUE</b>		<b>36613.61</b>		
<b>TRADE-IN SALES TAX CREDIT</b>		<b>N/A</b>		
<b>DEPOSIT/PARTIAL PAYMENT</b>		<b>N/A</b>		
<b>UNPAID BALANCE DUE</b>		<b>36613.61</b>		

The front and back of this Agreement and any documents which are part of this transaction or incorporated herein comprises the entire agreement affecting this Retail Purchase Agreement and no other agreement or understanding of any nature concerning the same has been made or entered into, or will be recognized. I have read the terms and conditions of this Agreement, including those terms and conditions that appear on the reverse side, and agree to them as if they were printed above my signature. I further acknowledge receipt of a copy of this Agreement. This Agreement shall not become binding until signed and accepted by an Dealership Representative.

Purchaser \_\_\_\_\_

Accepted By Authorized Dealership Representative \_\_\_\_\_

Purchaser \_\_\_\_\_

DealerCAP

CATALOG # 9463 162-32171

94727\*1\*FTF-FI  
 © 2015 CDK Global, LLC Arizona (05/14)

## ADDITIONAL AGREEMENTS BETWEEN THE DEALERSHIP AND PURCHASER(S)

1. **Terms Used In This Agreement:** This Retail Purchase Agreement contains the following words and phrases that appear throughout this Agreement and have particular meanings:
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  - **Manufacturer** - Means the company that manufactured the Vehicle.
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  - **Trade-In Vehicle** - Means the vehicle you are delivering to us as part of this transaction as identified on the front side of this Agreement.
2. **Our Right to Increase the Price:** We may increase the price of the Vehicle after we accept this Agreement if the Trade-In Vehicle is reappraised, new equipment is required by state or federal law, or the increase is caused by state or federal tax rate changes. If the price is increased, you may cancel this Agreement with full refund of any Deposit/Down Payment, provided that the cancellation occurs prior to you taking delivery of the purchased Vehicle.
3. **Manufacturer's Design Changes:** In the event the Manufacturer changes or modifies the design of or any part or accessory of the Vehicle after your order for the Vehicle has been entered by us, you will not have any claim or right against us if the Vehicle does not contain such changes or modifications, nor shall we be required to effect such changes or modifications to the Vehicle.
4. **Your Representations and Warranties:** You represent, warrant and affirm to us that (a) You are not purchasing a new Vehicle for resale or export within the period beginning on the date the Vehicle title is issued to you and ending on the date one (1) year thereafter. You confirm that you are relying on this representation and agree that we would not sell the Vehicle to you without this representation. If we are required by the Manufacturer to forfeit or repay any manufacturer incentives, allowance and/or special pricing, or if we suffer any loss or harm as a result of your breach of this provision, you agree to indemnify and hold us harmless from any such cost, loss or harm suffered as a result of or arising because of your breach; (b) the Deposit/Down Payment and any amounts due to us have been paid in full, any check given to us will be honored by your Bank, and that no part of the Deposit/Down Payment has been loaned to you by us or any third party; (c) all statements made by you in this Agreement and any other documents completed in connection with this transaction are true and correct; and (d) you are who you have represented yourself to be and you have purchased the Vehicle for your own use and not on behalf of another person, unless you have disclosed otherwise to us.
5. **Your Representations Regarding the Trade-In Vehicle:** Any Trade-In Vehicle delivered by you to us in connection with this transaction shall be accompanied by a Certificate of Title or documents sufficient to enable us to obtain a Certificate of Title to the Trade-In Vehicle in accordance with applicable state law. You warrant that the Trade-In Vehicle delivered to us is properly titled to you, has never been titled as or declared a total loss, salvage, junk, rebuilt, flood, or lemon buyback vehicle; that you have the right to sell or otherwise convey such vehicle; that such vehicle is free and clear of liens or encumbrances, except as may be noted on the front side of this Agreement; all emissions control equipment is on the vehicle and in satisfactory working order; and, unless you have told us otherwise, that you have not removed any equipment from the vehicle subsequent to our appraisal and that the odometer reading shown is accurate.
6. **Trade-In Vehicle Payoff:** If you are delivering a Trade-In Vehicle in connection with this transaction and the actual amount of the Balance Owed on the Trade-In Vehicle is greater than the amount of the Balance Owed as listed in this Agreement, you agree to pay the difference to us. If the actual amount of the Balance Owed is less than the amount listed, we will pay or credit the difference to you.
7. **Our Appraisal of Your Trade-In Vehicle:** If you are delivering a Trade-In Vehicle to us in connection with this transaction and the delivery will not be made until delivery of the Vehicle being purchased from us, we shall have the right to reappraise your Trade-In Vehicle at the time of delivery. The reappraised amount shall be the amount allowed for the Trade-In Vehicle in this transaction. If you are dissatisfied with the reappraisal, you may cancel this Agreement with full refund of any Deposit/Down Payment, provided that the cancellation occurs prior to you taking delivery of the purchased Vehicle.
8. **Remedies Upon Rightful Cancellation:** You agree that we are not liable for any damages resulting from our failure to deliver the Vehicle if the failure is caused by the manufacturer, an accident, fire, act of nature or any other causes beyond our control. This Agreement may be renegotiated or canceled (with full refund of any Deposit/Down Payment) if the Vehicle is not delivered to you as specified on the front side of this Agreement or pursuant to Paragraphs 2 or 7. If you have delivered a Trade-In Vehicle to us, the Trade-In Vehicle will be returned to you if we have not already sold it. If we have already sold the Trade-In Vehicle, we will refund the agreed upon Trade-In Allowance. Regardless of whether we return the Trade-In Vehicle or have already sold it, you shall be responsible for paying to us the Balance Owed on the Trade-In Vehicle if we have paid the Balance Owed to the Lienholder. We may keep any portion of the amount you have paid to us as a Deposit/Down Payment and any Trade-In Allowance we owe to you to offset against the amount you owe us. If the actual amount you owe to us is greater than the amount of the Deposit/Down Payment, you agree to pay the difference to us. If the actual amount you owe is less than the amount of the Deposit/Down Payment, we will pay the difference to you. You are responsible for paying the cost of repairing any damage and any other losses, liabilities, damages, claims, costs and expenses arising out of your use, possession and control of the Vehicle.
9. **Purchaser's Default and Dealership's Remedies:** In the event you have agreed to pay the Amount to be Financed in cash or financing is being obtained by you through a credit source of your choice and we do not receive the Amount to be Financed from you at the time of delivery of the Vehicle or on the date promised on the front of this Agreement, you fail to perform any of your other obligations under this Agreement, or you breach any representation or warranty made by you to us, we shall be permitted, at our sole discretion, to the choice of remedies in this Agreement, which may be used separately or together, including: (1) cancel this Retail Purchase Agreement; (2) repossess the Vehicle without notice (if permitted by law); (3) rescind the sales transaction; (4) seek collection for amounts due; (5) retain any cash down payment made by you; and/or (6) in the event that you have delivered a Trade-In Vehicle as part of the consideration for your purchase of the Vehicle from us, to sell such Trade-In Vehicle and reimburse the Dealership out of the proceeds of such sale for any reasonable expenses incurred in connection with preparing and offering the Trade-In Vehicle for sale and any actual damages suffered by us as a result of your default. Regardless of whether we return the Trade-In Vehicle or have already sold it, you shall be responsible for paying to us the Balance Owed on the Trade-In Vehicle if we have paid the Balance Owed to the Lienholder and for any reasonable expenses incurred by us in connection with preparing or reconditioning the Trade-In Vehicle for sale. Any remedies in this Paragraph 9 shall be in addition to, and not in lieu of, any other remedies available under the Retail Purchase Agreement or at law or equity. Any waiver of all or part of a remedy hereunder is not a continuing waiver. If the actual amount you owe to us is greater than the amount of the down payment and/or proceeds from the sale of your Trade-In Vehicle, you agree to pay the difference to us upon demand and if the actual amount you owe is less, then we will pay the difference to you.
10. **Other Products and Services:** The Dealership offers its customers goods and services from various suppliers. The amounts charged to customers for such goods or services may be greater than the Dealership's cost, and/or the Dealership may receive a commission or other payment in connection with such sale. You are not required to purchase any other goods or services from us, nor are you required to finance the Amount to be Financed under this Agreement with a particular lending source. In the event this Agreement includes a charge for other goods or services for which you must complete an application for coverage, and for any reason such coverage cannot be provided, you will receive a credit for the amount charged. If the cost of other goods or services was included in the amount to be financed in connection with this transaction, then this credit will be applied to the outstanding balance you owe to the Lender.
11. **Dealer Assisted Financing:** If we assist you to obtain financing for this transaction, the Annual Percentage Rate may be negotiated with us and we may receive a fee, commission or other compensation from the Lender. We do not make any representations or warranties regarding whether you obtained the best rate or could have obtained a better rate from us or a third party.
12. **CONTRACTUAL DISCLOSURE STATEMENT (USED VEHICLES ONLY)** The information you see on the window form for this Vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale. **SPANISH TRANSLATION:** Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.
13. **GOVERNING LAW:** THE TERMS AND CONDITIONS OF THIS AGREEMENT (INCLUDING ANY DOCUMENTS WHICH ARE A PART OF THIS TRANSACTION OR INCORPORATED HEREIN BY REFERENCE) AND ANY SALE HEREUNDER WILL BE GOVERNED BY THE LAWS OF THE STATE OF ARIZONA.
14. **LIMIT ON DAMAGES:** TO THE EXTENT PERMITTED BY ARIZONA LAW, PURCHASER EXPRESSLY WAIVES AND SHALL NOT BE ENTITLED TO RECOVER FROM THE DEALERSHIP ANY CONSEQUENTIAL DAMAGES, DAMAGES TO PROPERTY, DAMAGES FOR LOSS OF USE, LOSS OF TIME, LOSS OF PROFITS OR INCOME, OR ANY OTHER INCIDENTAL DAMAGES.
15. **CONDITIONAL DELIVERY AGREEMENT/LIMITED RIGHT TO CANCEL:** You may secure financing for this transaction through us or a financial institution of your choice. If you have elected to secure financing through us, the provisions of the Conditional Delivery Agreement/Limited Right to Cancel will apply. We may cancel this Agreement if: (1) you provide false or incomplete information regarding your creditworthiness; (2) your credit application is not approved by a financing source; or (3) your purchase is subject to the Conditional Delivery Agreement/Limited Right to Cancel and the Retail Installment Sale Contract is not accepted or approved by a financing source on terms acceptable to us.
16. **Entire Agreement and Signing Other Documents:** The front and back of this Agreement and any documents which are part of this transaction or incorporated herein by reference comprise the entire agreement affecting this transaction. No other agreement or understanding of any nature has been made or will be recognized. You agree to sign any and all documents necessary to complete the terms of this transaction.

## **EXHIBIT B**

### **STANDARD TERMS AND CONDITIONS**

(Last Updated January 19, 2023)

\*The term "Contractor" may substitute for the term "vendors," "consultants," or "firms," depending on the purpose of the underlying Contract.

#### **IN GENERAL**

1. **PARTIES:** The City of Flagstaff ("City") and the contractor identified in the Contract ("Contractor") may be referred to individually as "Party" or collectively as "Parties".
2. **NOTICE TO PROCEED:** Contractor shall not commence performance until after the City has issued a Notice to Proceed.
3. **LICENSES AND PERMITS:** Contractor its expense shall maintain current federal, state, and local licenses, permits and approvals required for performance of the Contract and provide copies to City upon request.
4. **COMPLIANCE WITH LAWS:** Contractor shall comply with all applicable federal, state and local laws, regulations, standards, codes and ordinances in performance of the Contract.
5. **NON-EXCLUSIVE:** Unless expressly provided otherwise in the Contract, the Contract is non-exclusive and the City reserves the right to contract with others for materials or services.
6. **SAMPLES:** Any sample submitted to the City by the Contractor and relied upon by City as representative of quality and conformity, shall constitute an express warranty that all materials and/or service to be provided to City shall be of the same quality and conformity.

#### **MATERIALS**

7. **PURCHASE ORDERS:** The City will issue a purchase order for the materials covered by the Contract, and such order will reference the Contract number.
8. **QUALITY:** Contractor warrants that all materials supplied under the Contract will be new and free from defects in material or workmanship. The materials will conform to any statements made on the containers or labels or advertisements for the materials and will be safe and appropriate for use as normally used. The City's inspection, testing, acceptance or use of materials shall not serve to waive these quality requirements. This warranty shall survive termination or expiration of the Contract.
9. **ACCEPTANCE:** All materials and services provided by Contract are subject to final inspection and acceptance by the City. Materials and services failing to conform to the Contract specifications may be rejected in whole or part. If rejected, Contractor is responsible for all costs associated arising from rejection.
10. **MANUFACTURER'S WARRANTIES:** Contractor shall deliver all Manufacturer's Warranties to the City upon the City's acceptance of the materials.

11. **PACKING AND SHIPPING:** Contractor shall be responsible for industry standard packing which conforms to requirements of carrier's tariff and ICC regulations. Containers shall be clearly marked as to lot number, destination, address and purchase order number. All shipments shall be F.O.B. Destination, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001, unless otherwise specified by the City. C.O.D. shipments will not be accepted.
12. **TITLE AND RISK OF LOSS:** The title and risk of loss of material shall not pass to the City until the City actually receives the material at the point of delivery and the City has completed inspection and has accepted the material, unless the City has expressly provided otherwise in the Contract.
13. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials shall fully comply with all provisions of the Contract. If a tender is made which does not fully conform, this shall constitute a breach and Contractor shall not have the right to substitute a conforming tender without prior written approval from the City.
14. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor may not substitute nonconforming materials and/or services. Delivery of nonconforming materials and/or services, or a default of any nature, shall constitute a breach of the Contract as a whole.
15. **SHIPMENT UNDER RESERVATION PROHIBITED:** Contractor is not authorized to ship materials under reservation and no tender of a bill of lading shall operate as a tender of the materials.
16. **LIENS:** All materials and other deliverables supplied to the City shall be free of all liens, other than the security interest held by Contractor, until payment in full is made by the City. Upon request of the City, Contractor shall provide a formal release of all liens.
17. **CHANGES IN ORDERS:** The City reserves the right at any time to make changes in any one or more of the following: (a) methods of shipment or packing; (b) place of delivery; and (c) quantities. If any change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment shall be evidenced in writing and approved by the City Purchasing Director prior to the institution of the change.

## **PAYMENT**

18. **INVOICES:** A separate invoice shall be issued for each shipment and each job completed. Invoices shall include the Contract and/or Purchase Order number and dates when goods had been shipped or work performed. Invoices shall be sent within thirty (30) days following performance. Payment will only be made for satisfactory materials and/or services received and accepted by City.
19. **LATE INVOICES:** The City may deduct up to 10% of the payment price for late invoices. The City operates on a fiscal year budget, from July 1 through the following June 30. Except in unusual circumstances, which are not due to the fault of Contractor, the City will not honor any invoices or claims submitted after August 15 for materials or services supplied in the prior fiscal year.

20. **TAXES:** Contractor shall be responsible for payment of all taxes including federal, state, and local taxes related to or arising out of Contractor's performance of the Contract. Such taxes include but are not limited to federal and state income tax, social security tax, unemployment insurance taxes, transaction privilege taxes, use taxes, and any other taxes or business license fees as required.

Exception: The City will pay any taxes which are specifically identified as a line-item dollar amount in the Contractor's bid, proposal, or quote, and which were considered and approved by the City as part of the Contract award process. In this event, taxes shall be identified as a separate line item in Contractor's invoices.

21. **FEDERAL EXCISE TAXES:** The City is exempt from paying certain Federal Excise Taxes and will furnish an exemption certificate upon request.
22. **FUEL CHARGES:** Contractor at its own expense is liable for all fuel costs related to performance. No fuel surcharges will be accepted or paid by the City.
23. **DISCOUNTS:** If the Contract provides for payment discounts, payment discounts will be computed from the later date of the following: (a) when correct invoice is received by the City; or (b) when acceptable materials and/or materials were received by the City.
24. **AMOUNTS DUE TO THE CITY:** Contractor must be current and remain current in all obligations due to the City during performance. Payments to Contractor may be offset by any delinquent amounts due to the City or fees and charges owed to the City under the Contract.
25. **OFAC:** No payments may be made to any person in violation of Office of Foreign Assets Control regulations. 31 C.F.R. Part 501.

### SERVICES

26. **INDEPENDENT CONTRACTOR:** Contractor shall be an independent contractor for purposes of all laws, including but not limited to the Fair Labor Standards Act, Federal Insurance Contribution Act, Social Security Act, Federal Unemployment Tax Act, Internal Revenue Code, Immigration and Naturalization Act; Arizona revenue and taxation, workers' compensation, and unemployment insurance laws.
27. **CONTROL:** Contractor shall be responsible for the control of the work.
28. **WORK SITE:** Contractor shall inspect the work site and notify the City in writing of any deficiencies or needs prior to commencing work.
29. **SAFEGUARDING PROPERTY:** Contractor shall responsible for any damage to real property of the City or adjacent property in performance of the work and safeguard the worksite.
30. **QUALITY:** All work shall be of good quality and free of defects, performed in a diligent and professional manner.
31. **ACCEPTANCE:** If the City rejects Contractor's work due to noncompliance with the Contract, the City, after notifying Contractor in writing, may require Contractor to correct the

deficiencies at Contractor's expense, or cancel the work order and pay Contractor only for work properly performed.

32. **WARRANTY:** Contractor warrants all work for a period of one year following final acceptance by the City. Upon receipt of written notice from the City, Contractor at its own expense shall promptly correct work rejected as defective or as failing to conform to the Contract, whether observed before or after acceptance, and whether or not fabricated, installed or completed by Contractor, and shall bear all costs of correction. If Contractor does not correct deficiencies within a reasonable time specified in the written notice from the City, the City may perform the work and Contractor shall be liable for the costs. This one year warranty is in addition to and does not limit Contractor's other obligations herein. This warranty shall survive termination or expiration of the Contract.

### **INSPECTION, RECORDS, ADMINISTRATION**

33. **RECORDS:** The City shall have the right to inspect and audit all Contractor books and records related to the Contract for up to five years after completion of the Contract.
34. **RIGHT TO INSPECT BUSINESS:** The City shall have the right to inspect the place of business of the Contractor or its subcontractor during regular business hours at reasonable times, to the extent necessary to confirm Contract performance.
35. **PUBLIC RECORDS:** The Contract and any related materials are a matter of public record and subject to disclosure pursuant to Arizona Public Records Law. A.R.S. § 39-121 et seq. If Contractor has clearly marked its proprietary information as "confidential", the City will endeavor to notify Contractor prior to release of such information.
36. **CONTRACT ADMINISTRATION:** Contractor will be required to participate in the City's contract administration process. Contractor will be closely monitored for Contract compliance and will be required to promptly correct any deficiencies.

### **INDEMNIFICATION**

37. **GENERAL INDEMNIFICATION:** Contractor shall indemnify and hold the City, and its officers, agents, employees, and subcontractors, harmless from and against any third-party claims, actions, liabilities, costs, including reasonable attorneys' fees and other costs of defense, arising out of the acts, errors, or omissions of Contractor, its officers, agents, employees, and subcontractors, in performing or failing to perform the responsibilities identified in the Contract. In the event any such action or claim is brought against the City, Contractor shall, if the City so elects, and upon tender by the City: (a) defend the same at Contractor's sole cost and expense; and/or (b) promptly satisfy any judgment adverse to the City; or (c) reimburse the City for any loss, cost, damage, or expense, including attorneys' fees, suffered or incurred by the City. The City shall notify Contractor, within a reasonable time, of any claim, threat of claim, or legal action as it relates to the responsibilities identified in the Contract. This indemnification shall survive termination or expiration of the Contract.
38. **INTELLECTUAL PROPERTY INDEMNIFICATION:** Contractor shall indemnify and hold the City, and its officers, agents, employees, and subcontractors, harmless from and against any third-party claims, actions, liabilities, costs, including reasonable attorneys' fees and other costs of defense arising out of the alleged infringement of any patent, trademark or copyright or other proprietary rights of any third-parties arising out of Contract performance

or use by the City of materials furnished or work performed under the Contract. In the event any such action or claim is brought against the City, Contractor shall, if the City so elects and upon tender by the City: (a) defend the same at Contractor's sole cost and expense; and/or (b) promptly satisfy any judgment adverse to the City; or (c) reimburse the City for any loss, cost, damage, or expense, including attorneys' fees, suffered or incurred by the City. The City shall notify Contractor, within a reasonable time, of any claim, threat of claim, or legal action as it relates to the responsibilities identified in the Contract. This indemnification shall survive termination or expiration of the Contract.

- 39. NETWORK SECURITY AND PRIVACY LIABILITY:** Contractor shall indemnify and hold the City, and its officers, agents, employees, and subcontractors, harmless from an against any third-party claims, actions, liabilities, costs, including reasonable attorneys' fees and other costs of defense arising out of all acts, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, breach of privacy perils, wrongful disclosure, collection, or other negligence in the handling of confidential information, privacy perils, and including coverage for related regulatory defense and penalties; data breach expenses, including but not limited to, consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services in the performance of services for the City. In the event any such action or claim is brought against the City, Contractor shall, if the City so elects and upon tender by the City: (a) defend the same at Contractor's sole cost and expense; and/or (b) promptly satisfy any judgment adverse to the City; or (c) reimburse the City for any loss, cost, damage, or expense, including attorneys' fees, suffered or incurred by the City. The City shall notify Contractor, within a reasonable time, of any claim, threat of claim, or legal action as it relates to the responsibilities identified in the Contract. This indemnification shall survive termination or expiration of the Contract.

#### **CONTRACT CHANGES**

- 40. PRICE INCREASES:** Except as expressly provided for in the Contract, no price increases will be approved.
- 41. COMPLETE AGREEMENT:** The Contract is intended to be the complete and final agreement of the Parties.
- 42. AMENDMENTS:** The Contract may be amended by written agreement of the Parties.
- 43. SEVERABILITY:** If any term or provision of the Contract is found by a court of competent jurisdiction to be illegal or unenforceable, then such term or provision is deemed deleted and the remainder of the Contract shall remain in full force and effect.
- 44. NO WAIVER:** Both Parties have the right insist upon strict performance of the Contract, and the prior failure of a Party to insist upon strict performance, or a delay in any exercise of any right or remedy, or acceptance of materials or services, shall not be deemed a waiver of any right to insist upon strict performance.
- 45. ASSIGNMENT:** Contractor was selected for its special knowledge, skills, and expertise, and shall not assign the services/materials required in the Contract, in whole or in part, without the City's prior written consent, which may be withheld for any reason. Any

assignment without such consent shall be null and void. No assignment shall relieve Contractor (Assignor) from any of its obligations and liabilities under the Contract with respect to the City. The Purchasing Director shall have authority to consent to an assignment on behalf of the City.

46. **BINDING EFFECT:** The Contract shall be binding upon and inure to the benefit of the Parties and their successors and assigns.

#### **EMPLOYEES AND SUBCONTRACTORS**

47. **SUBCONTRACTING:** Contractor was selected for its special knowledge, skills, and expertise, and shall not assign the services/materials required in the Contract, in whole or in part, without the City's prior written consent, which may be withheld for any reason. The City reserves the right to withhold consent if the subcontractor is deemed irresponsible and/or subcontracting may negatively affect performance. All subcontracts shall comply with the underlying Contract. Contractor is responsible for Contract performance whether or not subcontractors are used.
48. **NONDISCRIMINATION:** Contractor shall not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, disability, genetic information, veteran's status, pregnancy, familial status and represents and warrants that it complies with all applicable federal, state and local laws and executive orders regarding employment. In addition, any Contractor whose business is located within City of Flagstaff limits shall comply with the City Code, Chapter 14-02, *Civil Rights*, which also prohibits discrimination based on sexual orientation, or gender identity or expression.
49. **DRUG FREE WORKPLACE:** The City has adopted a Drug Free Workplace policy for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Contractor's personnel shall abstain from use or possession of illegal drugs while engaged in performance of the Contract.
50. **IMMIGRATION LAWS:** Pursuant to A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors shall comply with all state and federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). A breach of state and federal immigration laws and regulations shall constitute a material breach of the Contract and shall subject Contractor to penalties up to and including termination of the Contract. The City may, at its sole discretion, conduct random verification of the employment records of the employees of the Contractor and any subcontractors to ensure compliance with all state and federal immigration laws and regulations. Neither Contractor nor any subcontractor shall be deemed to have materially breached the Contract if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by A.R.S. § 23-214(A).

#### **DEFAULT AND TERMINATION**

51. **TERMINATION FOR DEFAULT:** Prior to terminating the Contract for a material breach, the non-defaulting Party shall give the defaulting Party written notice and reasonable opportunity to cure the default, not to exceed thirty (30) days unless a longer period of time is granted by the non-defaulting Party in writing. In the event the breach is not timely cured,

or in the event of a series of repeated breaches the non-defaulting Party may elect to terminate Contract by written notice to Contractor, which shall be effective upon receipt. In the event of default, the Parties may execute all remedies available at law in addition to the Contract remedies provided for herein.

52. **CITY REMEDIES:** In the event of Contractor's default, the City may obtain required materials and/or services from a substitute contractor, and Contractor shall be liable to the City to pay for the costs of such substitute service. The City may deduct or offset the cost of substitute service from any balance due to Contractor, and/or seek recovery of the costs of substitute service against any performance security, and/or collect any liquidated damages provided for in the Contract. Remedies herein are not exclusive.
53. **CONTRACTOR REMEDIES:** In the event of the City's default, Contractor may pursue all remedies available at law, except as provided for herein.
54. **TERMINATION FOR NONAPPROPRIATION OF FUNDS:** The City may terminate all or a portion of the Contract due to budget constraints and non-appropriation of funds for the following fiscal year, without penalty or liability to Contractor.
55. **TERMINATION FOR CONVENIENCE:** Unless expressly provided for otherwise in the Contract, the Contract may be terminated in whole or part by the City for convenience upon thirty (30) days written notice, without further penalty or liability to Contractor. If the Contract is terminated, City shall be liable only for payment for satisfactory materials and/or services received and accepted by the City before the effective date of termination.
56. **TERMINATION DUE TO INSOLVENCY:** If Contractor becomes a debtor in a bankruptcy proceeding, or a reorganization, dissolution or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of Contractor under federal bankruptcy law or any state insolvency law, Contractor shall immediately provide the City with a written notice thereof. The City may terminate the Contract, and Contractor is deemed in default, at any time if the Contractor becomes insolvent, or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's ability to perform under the Contract.
57. **PAYMENT UPON TERMINATION:** Upon termination of the Contract, the City will pay Contractor for satisfactory performance up until the effective date of termination. The City shall make final payment within thirty (30) days from receipt of the Contractor's final invoice.
58. **CANCELLATION FOR GRATUITIES:** The City may cancel the Contract at any time, without penalty or further liability to Contractor, if City determines that Contractor has given or offered to give any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with award or performance of the Contract.
59. **CANCELLATION FOR CONFLICT OF INTEREST:** Pursuant to A.R.S. § 38-511, if the City identifies a conflict of interest in the award or performance of the Contract, the City may cancel the Contract within three years after its execution, without penalty or further liability to Contractor.

## **MISCELLANEOUS**

60. **COOPERATIVE PURCHASE CONTRACTS:** Presuming that Contractor agreed to such during the procurement process, Contractor will enter into cooperative purchase arrangements, as sanctioned by state and federal law, to allow Contractor to sell materials and services to any member of a cooperative group under the same pricing, terms and conditions of the contract awarded to the Contractor by the public procurement unit, following a competitive procurement process.
61. **ADVERTISING:** Contractor shall not advertise or publish information concerning its Contract with the City without the prior written consent of the City.
62. **NOTICES:** All notices given pursuant to the Contract shall be delivered at the addresses as specified in the Contract or updated by Notice to the other Party. Notices may be: (a) personally delivered, with receipt effective upon personal delivery; (b) sent via certified mail, postage prepaid, with receipt deemed effective four days after being sent; or (c) sent by overnight courier, with receipt deemed effective two days after being sent. Notice may be sent by email as a secondary form of notice.
63. **THIRD PARTY BENEFICIARIES:** The Contract is intended for the exclusive benefit of the parties. Nothing herein is intended to create any rights or responsibilities to third parties.
64. **GOVERNING LAW:** The Contract shall be construed in accordance with the laws of Arizona.
65. **FORUM:** In the event of litigation relating to the Contract, any action at law or in equity shall be filed in Coconino County, Arizona.
66. **ATTORNEYS' FEES:** If any action at law or in equity is necessary to enforce the terms of the Contract, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs, professional fees and expenses.
67. **FORCE MAJUERE:**
- a. There may be events that occur during the term of the Contract that are beyond the control of both the City and Contractor, including events of war, floods, labor, disputes, earthquakes, epidemics, pandemics, adverse weather conditions not reasonably anticipated, forest fires, and other acts of God ("Events"). These Events may result in a temporary delay of contractual deliverables, or the permanent inability to provide the contractual deliverables that are the subject of the Contract.
  - b. There shall be no claims arising from a temporary delay of contractual deliverables, or the permanent inability to provide the contractual deliverables caused by the Events and the City shall not pay additional costs incurred by Contractor as a result of such Events.
  - c. The Parties shall act in good faith to extend the Contract completion date without any penalty to Contractor and that the extension will be in an amount of time equal to any temporary delay. This provision of the Contract supersedes all other terms regarding temporary delay, permanent shut down, or increased costs.

68. **NO BOYCOTT OF ISRAEL:** Pursuant to A.R.S. §§ 35-393 and 35-393.01, if a Party has over ten (10) employees and the Contract is worth at least one-hundred thousand dollars and no cents (\$100,000), the Party shall certify that it is not currently engaged in, and agrees, for the duration of the Contract, will not engage in a boycott of Israel.
69. **CHANGES TO CONTRACT:** The Contract shall not be modified within the first year after Contract award where: (a) an amendment may result in a competitive advantage that was not made available to other proposers/bidders; or (b) requests for changes may delay commencement of performance.
70. **FORCED LABOR OF ETHNIC UYGHURS:** If Contractor engages in for-profit activity and has ten (10) or more employees, pursuant to A.R.S. §35-394, the Contractor certifies that it does not currently, and agrees for the duration of the contract that it will not, use: 1) the forced labor of ethnic Uyghurs in the People's Republic of China; 2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and 3) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If the Contractor becomes aware during the term of the contract that the company is not in compliance with the written certification, the Contractor shall notify the City within five (5) business days after becoming aware of the noncompliance. If the Contractor does not provide the City with a written certification that the Contractor has remedied the noncompliance within 180 days after notifying the City of the noncompliance, this Contract terminates, except that if the contract termination date occurs before the end of the remedy period the Contract terminations on the Contract termination date.

**EXHIBIT C**  
**STANDARD INSURANCE REQUIREMENTS**

(Last Updated January 19, 2023)

\*The term "Contractor" may substitute for the term "vendors," "consultants," or "firms," depending on the purpose of the underlying Contract.

1. **IN GENERAL:** Contractor shall maintain insurance against claims for injury to persons or damage to property, arising from performance of or in connection with the Contract by Contractor, its agents, representatives, employees, and/or subcontractors.
2. **REQUIREMENT TO PROCURE AND MAINTAIN:** Each insurance policy required by the Contract shall be in effect at, or before, commencement of work under the Contract and shall remain in effect until all of Contractor's obligations under the Contract have been met, including any warranty periods. Contractor's failure to maintain the insurance policies as required by the Contract, or to provide timely evidence of renewal, will be considered a material breach of the Contract.
3. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** The following insurance requirements are minimum requirements for the Contract and in no way limit the indemnity covenants contained in the Contract. The City does not represent or warrant that the minimum limits set forth in the Contract are sufficient to protect Contractor from liabilities that might arise out of the Contract, and Contractor is free to purchase such additional insurance as Contractor may determine is necessary.

Where applicable, as related to the Scope of Work, Contractor shall provide coverage at least as broad and with limits not less than those stated below.

A.	Commercial General Liability - Occurrence Form	
	General Aggregate	\$2,000,000
	Products/Completed Operations	\$1,000,000
	Each Occurrence	\$1,000,000
B.	Umbrella Coverage	\$2,000,000
C.	Automobile Liability	
	Any Automobile or Owned, Hired, and Non-owned Vehicles Combined Single Limit Per Accident for Bodily Injury & Property Damage	\$1,000,000
D.	Workers' Compensation and Employer's Liability	
	Workers' Compensation	Statutory
	Employer's Liability: Each Accident	\$1,000,000
	Disease - Each Employee	\$1,000,000
	Disease - Policy Limit	\$1,000,000
E.	Professional Liability	\$2,000,000
F.	Network Security and Privacy Liability	
	Per claim	\$2,000,000
	Annual Aggregate	\$2,000,000

4. **NETWORK SECURITY AND PRIVACY LIABILITY:** Contractor shall maintain the requisite insurance requirements covering all acts, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, breach of privacy perils, wrongful disclosure, collection, or other negligence in the handling of confidential information, privacy perils, and including coverage for related regulatory defense and penalties; data breach expenses, including but not limited to, consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services in the performance of services for the City. The insurance policy shall include coverage for third-party claims. The insurance policy shall contain an affirmative coverage grant for contingent bodily injury and property damage emanating from the failure of the technology services or an error or omission in the content/information provided.
5. **SELF-INSURED RETENTION:** Any self-insured retentions must be declared to and approved by the City. If not approved, the City may require that Contractor reduce or eliminate such self-insured retentions with respect to the City, its officers, agents, employees, and/or subcontractors. Contractor shall be solely responsible for any self-insured retention amounts. The City at its option may require Contractor to secure payment of such self-insured retention by a surety bond or irrevocable and unconditional letter of credit.
6. **OTHER INSURANCE REQUIREMENTS:** The insurance policies shall contain, or be endorsed to contain, the following provisions:
  - A. Additional Insured: In Commercial General Liability and Automobile Liability Coverages, the City of Flagstaff, its officers, officials, agents, employees, and/or subcontractors shall be named and endorsed as additional insureds with respect to liability arising out of the Contract and activities performed by or on behalf of Contractor, including products and completed operations of Contractor, and automobiles owned, leased, hired, or borrowed by Contractor.
  - B. Broad Form: Contractor's insurance policy shall contain broad form contractual liability coverage.
  - C. Primary Insurance: Contractor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees, and/or subcontractors. Any insurance or self-insurance maintained by the City, its officers, officials, agents, employees, and/or subcontractors shall be in excess of the coverage of Contractor's insurance and shall not contribute to it.
  - D. Each Insured: Contractor's insurance policies shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  - E. Not Limited: Coverage provided by Contractor shall not be limited to the liability assumed under the indemnification provisions of the Contract.
  - F. Waiver of Subrogation: The insurance policies shall contain a waiver of subrogation against the City, its officers, officials, agents, employees, and/or subcontractors for losses arising from work performed by Contractor for the City.
7. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of the Contract shall provide the required coverage and shall not be suspended, voided, cancelled, and/or reduced in coverage or in limits unless prior written notice has been given to the City. Notices required by this section shall be sent directly to the Procurement Agent and shall reference the Contract Number.

8. **ACCEPTABILITY OF INSURERS:** Contractor shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A-: VII. The City does not represent or warrant that the above required minimum insurer rating is sufficient to protect Contractor from potential insurer insolvency.
9. **CERTIFICATES OF INSURANCE:** Contractor shall furnish the City with certificates of insurance (ACORD form) as required by the Contract. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance. The City Contract number shall be noted on the certificates of insurance. If requested by the City, all certificates of insurance and endorsements must be received and approved by the City before the Contractor commences work.
10. **POLICIES:** The City reserves the right to require, and receive within ten (10) days, complete, certified copies of all insurance policies and endorsements required by the Contract. The City shall not be obligated, however, to review any insurance policies or to advise Contractor of any deficiencies in such policies and endorsements. The City's receipt of Contractor's policies or endorsements shall not relieve Contractor from, or be deemed a waiver of, the City's right to insist on strict fulfillment of Contractor's obligations under the Contract.
11. **MODIFICATIONS:** Any modification or variation from the insurance requirements in the Contract must have the prior approval of the City's Attorney's Office in consultation with the City's Risk Manager, whose decision shall be final. Such action will not require a formal Contract amendment but may be made by their handwritten revision and notation to the foregoing insurance requirements.